

PRIVY COUNCIL REPORTS

HOWE YOON CHONG v.
CHIEF ASSESSOR, PROPERTY TAX, SINGAPORE

[P.C. (Lord Wilberforce, Viscount Dilhorne,
Lord Fraser of Tullybelton, Lord Russell of Killowen &
Lord Roskill) June 3, 4 & July 24, 1980]
[Privy Council Appeal No. 11 of 1979]

Revenue Law — Property Tax — Valuation — Revision of annual value of land by Chief Assessor — Validity of Valuation List — Whether proposal to amend valuation list valid — Inequalities in valuation list — Whether breach of right of equality — Federal Constitution, art. 8 — Property Tax Act, 1961, ss. 2, 10 & 18.

Constitutional Law — Equality before the law — Federal Constitution, art. 8.

In this case the appellant became the owner of a half-share of land in Singapore and a notice of transfer was given to the respondent, the Chief Assessor. The respondent served a notice on the appellant and his co-owner proposing that the annual value be amended from \$1,340 to \$26,000 with effect from April 4, 1973. The appellant gave notice, objecting to the increase but the respondent decided not to amend his proposal. The appellant appealed to the Valuation Review Board which dismissed his appeal and confirmed the assessment. He appealed to the High Court which allowed the appeal and discharged the assessment. The respondent appealed to the Court of Appeal which allowed the appeal and restored the assessment. The appellant, with leave of the Court of Appeal, appealed to the Privy Council.

In the High Court Rajah J. had allowed the appeal from the Valuation Review Board on the ground that the Chief Assessor's proposal to amend the Valuation List in respect of the appellant's property was invalid and the learned judge did not consider the question of value — see [1978] 2 M.L.J. 87. The Court of Appeal held that the learned Judge had erred in deciding that the Chief Assessor's proposal was invalid — see [1979] 1 M.L.J. 207. The appellant did not appeal against that part of the judgment. The Court of Appeal also held that the Valuation List itself was valid and went on to decide the question of value against the appellant. It was argued before the Privy Council that (a) the Court of Appeal was wrong in holding that the Valuation List was valid and (b) the Court of Appeal ought not to have dealt with the question of value because they had not heard submissions from the parties on it.

Held: (1) on the evidence, the Valuation List was not so fundamentally defective as to be invalid. Even if it were accepted that, owing to shortage of manpower or some other reason, the list contained more defects than might have been expected, there was no evidence of the massive errors that would be required to justify a conclusion that the list was invalid;

(2) a breach of the equal protection clause, that is Article 8 of the Constitution, could not be established by proving the existence of inequalities due to inadvertence or inefficiency unless they were on a very substantial scale. Where the defects are the result of inadvertence or inefficiency, such as is alleged in this case, the test of unconstitutionality, would not be substantially different from the test of validity of the list. In the present case defects on the necessary scale had not been proved to exist;

(3) the Court of Appeal were therefore correct in holding that the 1973 Valuation List was not invalid;

(4) as neither party had addressed the Court of Appeal on the question of value it was apparently common ground that if the Court of Appeal held the list to be valid the question of valuation would be best determined by a lower court. The case should therefore be sent back to the Court of Appeal for them to remit it to the High Court to determine the question of value in the light of such evidence limited to value as the parties may put before it.

Obiter dictum: In any appeal where either the Chief Assessor or an owner intends to rely on comparisons with other properties, a list of the subjects alleged to be comparable should be supplied to the other party in good time before the hearing.

A Cases referred to:-

(1) *Sioux City Bridge Co. v. Dakota County* (1922) 260 U.S. Reports 441; 67 Law Ed. 340.

(2) *Ladies Hosiery and Underwear Limited v. West Middlesex Assessment Committee* [1932] 2 K.B. 679.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

David Widdicombe Q.C. (P. Selvadurai with him)
B for the appellant.

Rt. Hon. Geoffrey Rippon Q.C. (James Chia and David Holgate with him) for the respondent.

Cur. Adv. Vult.

Lord Fraser of Tullybelton (delivering the judgment of the Board): This is an appeal from the Court of Appeal of Singapore against an assessment for property tax of a vacant plot of land at Peck Hay Road, Singapore. It raises a question of general interest as to whether the Valuation List for the year 1973 was a valid list. If it was valid, a question of valuation arises.

D The appellant is the owner of a one-half undivided share in a plot of vacant land known as T.S. Lot No. 61-134. Its overall area is 14,875 square feet but owing to the configuration of the land, which has no building frontage to Peck Hay Road and which includes steep slopes, it is said that the whole area is not available for building. The property changed hands in 1951 at a price of \$26,775 and its annual value (for rates at that time) was then fixed at \$1,340 which was 5 per cent of the sale price. In 1960 it was purchased by the appellant's father and another person as tenants in common in equal shares for \$20,000, but the annual value was not re-assessed and it continued to be \$1,340 until 1973. On April 4, 1973 the appellant's father transferred his one undivided equal one-half share to the appellant without any consideration passing, and the Commissioner of Stamps was satisfied that only a bare legal estate passed as the beneficial interest of the half share was already vested in the appellant. A notice of the transfer was given to the respondent, the Chief Assessor, as required by the Property Tax Act. The respondent served a notice on the appellant and his co-owner proposing that the annual value be amended to \$26,000 with effect from April 4, 1973. The appellant gave notice objecting to this large increase but the respondent decided not to amend his proposal. The appellant appealed to the Valuation Review Board which dismissed his appeal and confirmed the assessment. He appealed to the High Court of Singapore which allowed the appeal and discharged the assessment. The respondent appealed to the Court of Appeal which allowed the appeal and restored the assessment. The appellant, with leave of the Court of Appeal, now appeals to this Board.

I Property Tax was introduced into Singapore, in lieu of the rates previously levied by local authorities, by the Property Tax Act 1961, which came into effect on January 1, 1961. It forms Chapter 144 of the Revised Edition of Acts published in 1970. It has been further amended by the Property Tax (Amendment) Act 1973. The 1961 Act provides (by section 6) that a property tax shall be payable by the owner of property in each year on the annual value of all houses,

buildings, lands and tenements included in the Valuation List. The rate of tax was fixed by section 8 at 36 per cent, subject to a power in the Minister to order reduction in certain cases not here relevant. Section 2 defines "annual value" as follows:—

"Annual Value", as used of a house or building or land or tenement, ... means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes;....

Provided that....

(b) In assessing the annual value of any property the 'annual value' of such property shall, at the option of the Chief Assessor, be deemed to be the annual value as hereinbefore defined or the sum which is equivalent to the annual interest at 5%—

(i)

(ii) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon."

By section 9 the Chief Assessor must cause to be prepared a Valuation List containing certain information about each property, including a description sufficient for its identification and the annual value ascribed thereto. The other sections immediately relevant are as follows:—

"10. It shall be in the discretion of the Chief Assessor either to cause to be prepared a new Valuation List every year or to adopt the Valuation List then in force, with such alterations and amendments as may have been made from time to time in accordance with the provisions of this Act.

18.—(1) Where it appears that any Valuation List is or has become inaccurate in any material particular, the Chief Assessor may, on the application of any person interested, or otherwise, and in the manner hereinafter provided, amend the Valuation List accordingly.

(2) When, in pursuance of subsection (1) of this section, the Chief Assessor considers it desirable that an amendment should be made to any Valuation List he shall give notice thereof to the owner of the property concerned stating what amendment is considered desirable and the date from which it is proposed the amendment shall take effect.

(6) [Re-numbered (7) by the Act of 1973]

For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where—

(a) The Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by—

....

(iii) the consideration paid or value passing on the sale or transfer directly or indirectly of any estate or interest in that or similar property...."

The Chief Assessor must give notice in August of each year of the time when and the place where the Valuation List for the ensuing year can be inspected and the list is then open for inspection for a period of 28 days from the date at which notice is given (section 11). At any time within that period any owner aggrieved by the inclusion in the Valuation List of any property or by the annual value ascribed thereto or by any other statement made in or by any omission from the Valuation List may lodge an objection with the Assessor. (Section 12(1)). If the owner is dissatisfied with the Chief Assessor's decision he may appeal to the Valuation Review Board (section 12(4)).

In the High Court Rajah J. allowed the appeal from the Valuation Review Board on the ground that the Chief Assessor's proposal to amend the Valuation List in respect of the appellant's property was invalid.

A That was enough to dispose of the appeal in favour of the appellant. The learned judge therefore did not consider the question of value, although evidence, both on affidavit and oral, was before him and although he had inspected the site and some properties said to be comparable to it. The Court of Appeal held that the learned judge had erred in deciding that the Chief Assessor's proposal was invalid, and the appellant does not appeal against that part of the judgment. The Court of Appeal also held that the Valuation List itself was valid. The argument on behalf of the appellant before their Lordships' Board was mainly directed against that part of the judgment. The Court of Appeal, having rejected the appellant's contentions that the proposal and the Valuation List were invalid, went on to decide the question of value against the appellant. The appellant contends that the Court of Appeal ought not to have dealt with the question of value because they had not heard submissions from the parties upon it.

Their Lordships will consider first whether the 1973 Valuation List was valid. The judgment of the Court of Appeal includes the statement that:—

"Although there appears to be no direct evidence, the yearly practice of the Chief Assessor since the Act came into operation has been to adopt the Valuation List then in force."

Their Lordships naturally accept that statement of the position which will be familiar to the learned judges of the Court of Appeal. The contention of the appellant is that, as a result of that practice being followed and of the list not being kept up-to-date by sufficient amendments, it had by 1973 become so defective as to be invalid. It was in fact not a Valuation List at all. Some properties that should have been in the list were said to have been omitted, and many of those that were in the list were said to be entered at values which were grossly inadequate in the light of subsequent increases in property values. The result was said to be unfair to owners whose property was entered in the list at its up-to-date value.

If that argument had been supported by sufficient evidence it would no doubt have been entitled to succeed, but in the present case their Lordships agree with the Court of Appeal that, on the evidence, the appellant has fallen far short of establishing that the 1973 List was invalid. The high water mark of the evidence for the appellant was in an affidavit given by Mr. Ronald Chua, a qualified valuer, who from December 1965 to May 1970 had been attached to the Property Tax Division of the Inland Revenue Department and who was therefore in a position to speak to the practice of the Division during that period. After saying that the work of his office had mainly consisted of assessing properties for the purpose of making amendments to the Valuation List, he said this:—

I "4. The Valuation List, which was made available for public inspection in August of each year... consisted of the entries from the previous year's list together with any proposed amendments arising from the circumstances referred to in Section 18(1) of the Act.

5. Having regard to the shortage of manpower, it was not possible for me or any of my fellow valuers in the Property Tax Division to up-date the assessments of all the existing properties in the List or to assess all the new properties that had come into being.

6. In the circumstances, the result was that the Valuation List was inevitably a patchwork of annual values fixed at different dates and over a period of many years. Generally speaking only a small number of the total number of properties in the Valuation List were reassessed in any year."

Mr. Chua's statements were corroborated by another qualified valuer Mr. Tan Ah Bah who had been in the Property Tax Division from August 1968 to February 1973. Against their evidence there was an affidavit from Mr. Lim Soo Chin who was at the date of his affidavit (January 16, 1978) Deputy Chief Valuer in the Property Tax Division. He said:

"4. The Valuation List is constantly kept up to date. Land re-assessment is carried out district by district, and also as and when a Notice of Transfer for a piece of land is received by the Department.

5. To the best of my knowledge all properties that are assessable for property tax in Singapore have been entered in the Valuation List."

On that evidence their Lordships are quite unable to hold that the Valuation List was so fundamentally defective as to be invalid. Even if Mr. Chua's description of it stood alone, the mere fact that the annual values had been fixed at various dates in a period of generally rising property values would not necessarily show that they were seriously inaccurate in 1973. But the evidence of Mr. Lim must also be taken into account; in addition to the paragraphs which have been quoted above from his affidavit, he referred in paragraph 7 to the history of property values in Singapore between August 1965 and September 1973 and explained that they had not risen at a constant rate during that period. All that the appellant has succeeded in proving is that the Valuation List of 1973 was defective in respect that some properties may have been omitted and some may have been entered at values which were out of date and too low. Even if it were accepted that, owing to shortage of manpower or some other reason, the list contained more defects than might have been expected, there is no evidence of the massive errors that would be required to justify a conclusion that the list was invalid. Their Lordships are fully in agreement with the conclusion of the Court of Appeal on this matter.

The argument for the appellant was also put in an alternative way. It was said that the appellant's property which had been entered in the 1973 Valuation List at its up-to-date value had not been fairly valued in comparison with other properties which appeared in the list at values that were too low, because they were out-of-date, and that the appellant's rights under Article 8 of the Constitution of Singapore (carried forward from the Constitution of the Federation of Malaysia when Singapore ceased to belong to the Federation) had been infringed. Article 8 provides as follows:—

"8(1) All persons are equal before the law and entitled to the equal protection of the law."

The Constitution, being the supreme law of Singapore, will of course prevail over any law or any administrative practice inconsistent with it. Their Lordships do not in any way underrate the fundamental importance of the Constitution or of Article 8 in particular. Indeed, the importance of the equal protection clause is emphasised if, as Rajah J. said, it is not possible under the Property Tax Act for an owner of property

A to complain that the property of another owner is entered on the List at an under-valuation. That seems to be the accepted view in Singapore and their Lordships will assume that it is correct, although the opposite view might be maintainable in light of the provision in section 12(1) for objections by any owner aggrieved by the inclusion of "any property" or by the annual value ascribed thereto or by "any omission" from the list. But a breach of the equal protection clause could not be established by proving the existence of inequalities due to inadvertence or inefficiency unless they were on a very substantial scale. Several authoritative decisions on the equal protection provision of the Fourteenth Amendment to the American Constitution were brought to the attention of their Lordships. Some caution is required in applying these authorities to the Constitution of Singapore but their Lordships see no reason to doubt that "intentional systematic under-valuation", such as was envisaged by the Supreme Court in *Sioux City Bridge Co. v. Dakota County*,⁽¹⁾ would be a breach of Article 8 of the Singapore Constitution. No case of that sort was made in this appeal. Something less might perhaps suffice, but their Lordships are of opinion that, where the defects are the result of inadvertence or inefficiency, such as is alleged in this case, the test of unconstitutionality would not be substantially different from the test of validity of the list. In the present case defects on the necessary scale have not been proved to exist.

E The case of *Ladies Hosiery and Underwear, Limited v. West Middlesex Assessment Committee*⁽²⁾ was relied upon in the respondent's contentions in both the High Court and the Court of Appeal and again before this Board, for the proposition that in valuing the property for rates "the assessing authority should not sacrifice correctness to ensure uniformity", per F Scrutton L.J. at page 688. That case did not lay down any new law. It merely decided that the (English) Rating and Valuation Act 1925 which defined the gross value of a hereditament as a rent at which it "might reasonably be expected to let from year to year" should be applied according to its terms. In the event of the corresponding provisions in sections G 2 and 18(7) of the 1961 Act leading to a valuation inconsistent with the equal protection clause of the Constitution it might be that the principle of correctness would have to yield to the principle of uniformity. That question does not arise in this appeal and their Lordships express no opinion upon it.

H For these reasons their Lordships agree with the Court of Appeal that the 1973 Valuation List was not invalid.

Having reached that decision, the Court of Appeal went on to consider the valuation of the appellant's property. Their conclusion on this matter was expressed thus:

I "As we have not been persuaded that the Valuation Review Board erred in principle or that there was no proper evidence on which the Board could properly have acted in affirming the Chief Assessor's proposed assessment this contention must also fail."

It appears that the Court of Appeal did not consider the evidence on value which had been put before Rajah J. in the High Court and which was much more extensive than the evidence led before the Va-

valuation Review Board. Moreover neither party addressed the Court of Appeal on the question of value as it was apparently common ground that, if the Court of Appeal held the list to be valid, the question of valuation would be best determined by a lower court. In the circumstances their Lordships are of opinion that the case must go back to Singapore for the question of value to be determined by the High Court. It may well be possible for that court to come to a decision on the evidence that was before Rajah J., but it will be for the judge to decide whether he requires further evidence.

Their Lordships take this opportunity of saying that in any appeal where either the Chief Assessor or an owner intends to rely on comparisons with other properties, a list of the subjects alleged to be comparable should be supplied to the other party in good time before the hearing.

Their Lordships will allow the appeal and order that the case be sent back to the Court of Appeal for them to remit it to the High Court to determine the question of value in the light of such evidence limited to value as the parties may put before it.

The appellant has been unsuccessful on the point which occupied much the greater part of the time at the hearing — the validity of the list. He must therefore pay the respondent's costs of this appeal. The order of the Court of Appeal, so far as it finds the respondent (appellant in the Court of Appeal) entitled to his costs in that court, will not be disturbed. The costs of the hearing before Rajah J. in the High Court, so far as relates to the question of value, will be reserved to the judge to whom the case is remitted by the Court of Appeal. The order of the Court of Appeal as to costs in the High Court will be varied to that extent.

Order accordingly.

Solicitors: *Coward Chance; Jaques & Co.*

TONG LEE HUA v. LEE YOKE SAN

[P.C. (Lord Wilberforce, Lord Edmund-Davies, Lord Fraser of Tullybelton, Lord Scarman & Lord Roskill)
July 2 & October 13, 1980]

[Privy Council Appeal No. 22 of 1979]

Practice and Procedure — Res Judicata — No previous adjudication.

Contract — Joint promise — Liability — Contracts Act, 1950, s. 44(1).

This was an appeal from the decision of the Federal Court reported in [1979] 1 M.L.J. 24. The Federal Court held that the plea of *res judicata* failed as it had not been shown that the point at issue was determined in the earlier judgment.

Held: it was clear that the learned judge in the earlier proceedings made no adjudication. He only permitted the plaintiff's summons to be withdrawn so that consideration could be given to the matter of adding the others as defendants. The plaintiff was therefore not precluded from subsequently applying to strike out the defences.

Case referred to:-

- (1) *Kok Hoong v. Leong Cheong Kweng Mines Ltd.*
[1964] M.L.J. 49.

A PRIVY COUNCIL APPEAL FROM MALAYSIA.

F. Fletcher-Cooke Q.C. (G.T. Rajan with him)
for the appellant.

Robert Pryor for the respondent.

Cur. Adv. Vult.

B Lord Edmund-Davies (delivering the judgment of the Board): This is an appeal brought with the leave of the Federal Court of Malaysia from a decision disallowing an appeal from the order of Abdul Hamid J. that the appellant's defence to the respondent's claim be struck out as disclosing no reasonable answer, and further ordering that the respondent be at liberty to sign final judgment for the sum claimed.

C The facts are these. In December 1969, a probate suit regarding the estate of one Chi Liung then proceeding in the High Court at Kuala Lumpur, to which the appellant and one Tong Young Fah and eleven others were parties, was compromised on terms which were made a rule of court. Pursuant thereto, **D** an agreement was entered into between the thirteen parties, a term of which was that a valuation of certain property was to be carried out jointly by the respondent (who is in practice at Kuala Lumpur as a chartered surveyor) and another valuer.

On May 28, 1970, Messrs. Richard Talalla and Company, advocates and solicitors, wrote to the respondent with reference to the probate suit, saying **E** that they were acting "for Messrs. Tong Lee Hwa and Tong Young Fah". They enclosed a copy of the agreement, and enquired whether the respondent was prepared to carry out the designated valuation. On June 1 the respondent accepted, and in April of the following year he received the solicitors' written instructions to proceed. Thereafter he carried out the work in two stages, rendering his first bill to the solicitors in October 1971 and the second in March 1972.

No payment being forthcoming, the respondent issued on January 3, 1973, a specially indorsed writ against the appellant and Tong Young Fah for his fees of \$35,964 with 6% interest. In answer to his summons for final judgment, the appellant filed a defence that the valuation work "was done at the request of and on behalf of all the parties to the consent order of Probate Suit No. 3 of 1969 and not in his personal capacity", and in his supporting affidavit he asserted that in consequence he was "not individually liable for the sum of \$35,964". (It is unnecessary to refer to the defence and affidavit of Tong Young Fah, the second defendant.) The plaintiff's summons for final judgment, supported by his affidavit that there was no defence to the action, came before Mohd. Azmi J. on March 26, 1973. The relevant part of the order then made was in the following terms:

I "IT IS ORDERED that the application herein be withdrawn with liberty to join the other parties involved in Probate Suit No. 3 of 1969 as defendants AND IT IS ORDERED that no provision be made as to costs."

There is no information as to what happened thereafter, save that it is clear that no parties were added as defendants. On December 10, 1976, nearly four years later, the plaintiff gave fresh notice of motion for an order "...that the defences of the first